

AO 243 (Rev. 09/17)

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court	District	Nebraska
Name (<i>under which you were convicted</i>): John J. Stratman		Docket or Case No.: 8:22CR15-001
Place of Confinement: FCI Englewood, Fed Correctional Inst 9595 W Quincy Ave Littleton CO		Prisoner No.: 91872-509
UNITED STATES OF AMERICA V.		Movant (<i>include name under which convicted</i>) John J. Stratman

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:
U.S. District Court For The District Of Nebraska
Roman L Hruska Federal Courthouse
111 S. 18th Plaza
Omaha, NE 68102
(b) Criminal docket or case number (if you know): 8:22CR15-001
2. (a) Date of the judgment of conviction (if you know): _____
(b) Date of sentencing: 8/18/2022
3. Length of sentence: 135 months (plus 7 years supervision upon release)
4. Nature of crime (all counts):
Count I: Use of a facility and means of interstate commerce to persuade, induce, entice a minor to engage in sexual activity.

Count II: Transportation in interstate commerce with intent to engage in illicit conduct with a minor.
5. (a) What was your plea? (Check one)
(1) Not guilty (2) Guilty (3) Nolo contendere (no contest)
6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?
Count I (dismissed): Use of a facility and means of interstate commerce to persuade, induce, entice a minor to engage in sexual activity.

Count II (plead guilty to): Transportation in interstate commerce with intent to engage in illicit conduct with a minor.
6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No

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8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

- (a) Name of court: _____
- (b) Docket or case number (if you know): _____
- (c) Result: _____
- (d) Date of result (if you know): _____
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

- (1) Docket or case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____
-

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: U.S. District Court For The District of Nebraska

(2) Docket or case number (if you know): 8:22-CR-15

(3) Date of filing (if you know): _____

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(4) Nature of the proceeding: Requested that \$25,000.00 fine be waived or reduced.

(5) Grounds raised:

Upon incarceration Social Security and VA benefits were lost (totaling \$6500.00 per month).

Alimony is \$4250.00 per month for 5 years

2019 Buick Enclave valued at \$33,000.00 was forfeited to U.S.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: Motion was denied.

(8) Date of result (if you know): 2/10/2023

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket of case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No (2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: Judge indicated that the request for a reduction or waiver of the \$25,000.00 fine should have been filed within 14 days of sentencing and filed by the government (not the defendant).

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Ineffective Assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Prior to sentencing when the prosecutor requested an upward departure, the defense attorney did not file a counter motion for a downward departure listing the reasons why John should get a lesser sentence. The reasons would have included: age, kidney cancer, PTSD since childhood, no prior record and years of volunteer work. Of note: John has recently experienced arrhythmia (tachycardia with a heart rate of 218). Upon his collapse a fellow inmate was knocked over.

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

- (2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: Excessive Sentence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The defense attorney informed John prior to sentencing that if he signed an appeal waiver he would receive a lesser sentence. After the sentencing, John was not contacted and there was no discussion of an appeal.

With the sentence (135 months) being almost double the high end of the guidelines (57-71 months), it would seem appropriate to have such a discussion.

Even a shorter sentence might be the equivalent of life without parole. We are asking for mercy for this geriatric offender.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: _____**(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):**

John was previously diagnosed with kidney cancer. He has received no monitoring while incarcerated despite an enlargement in his flank area. His tumor should be carefully monitored for growth. Usually this is done every 3-6 months by imaging (ultrasound, CT Or MRI).

He also has a serious arm wound that became infected with staph. Despite frequent dressing changes by a wound specialist and prison staff the wound has not healed.

More recently John has experienced tachycardia resulting in low oxygen and collapse.

Another inmate choked John to the point of him passing out.

He has suffered PTSD since childhood.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Ground One: Ineffective assistance of counsel was not previously presented in federal court. The defense attorney advised it was best to sign an appeal waiver (to get a lesser sentence) and therefore there was no further discussion of an appeal. There was no mention of having only 14 days to file a motion.

John as not informed that he would lose public funds (Social Security and VA benefits).

Ground Two: Excessive Sentence was not previously presented in federal court. Again the defense attorney did not file an appeal most likely due to John having signed an appeal waiver which supposedly would have given a lesser sentence.

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

Jim K. McGough, 11920 Burt St Suite 100, PO Box 540186, Omaha NE 68154

(b) At the arraignment and plea:

Jim K. McGough, 11920 Burt Street Suite 100, PO Box 540186, Omaha NE 68154

(c) At the trial:

(d) At sentencing:

Jim K. McGough, 11920 Burt St Suite 100, PO Box 540186, Omaha NE 68154

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:
We are asking the Court for reconsideration of the sentence. John received an Upward Variance from the guideline range and was sentenced to 135 months. This departure was a substantial increase from the 57-71 month guideline.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____.

(month, date, year)

Executed (signed) on 8-7-2023 (date)

 8-9-23

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.
I am John's sister and Power Of Attorney. John is incarcerated in Littleton CO. Due to the limited time left to file this motion, I am filing on his behalf.

Patricia A. Deharty

COPY

**Motion to Vacate, Set Aside, or Correct a Sentence
By a Person in Federal Custody**

(Motion Under 28 U.S.C. § 2255)

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit any legal arguments, you must submit them in a separate memorandum. Be aware that any such memorandum may be subject to page limits set forth in the local rules of the court where you file this motion.
6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
8. When you have completed the form, send the original and 2 copies to the Clerk of the United States District Court at this address:

Clerk, United States District Court for Nebraska

Address: 111 So. 18th Plaza

City, State Zip Code: Omaha, NE 68102

If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

9. **CAUTION: You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.**
10. **CAPITAL CASES: If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.**

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U.S. DISTRICT COURT

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AUG 15 2023

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U.S. DISTRICT COURT